

1 of cellular telephone systems.

2 15. In May, 1981, Congress mandated that two cellular
3 operators would exist in each designated RSA to encourage
4 competition. One operator was to be selected from the existing
5 regional wireline telephone companies; the competing entity was to
6 be a non-wireline operator, such as FEDERAL. The FCC held two
7 lotteries, administered concurrently for the two operators.

8 16. The FCC commenced the lotteries on or about September 23,
9 1988 and concluded them on or about December 20, 1989 after 22
10 lottery drawings for markets during that period.

11 17. To participate in this lottery, an applicant was required
12 to provide a financial statement or letter of credit from a lending
13 institution reflecting adequate means to construct a cellular system
14 should they become a successful winner. Applicants also had to
15 submit applications and specified engineering materials prepared in
16 conformity with FCC regulations.

17 18. In FCC lotteries, the winner of an RSA is initially listed
18 as a "Tentative Selectee," pending challenges from a Petition to
19 Deny from opponents, and screening by the FCC for conformity with
20 its regulations.

21 19. If there are no Petitions to Deny and the Tentative
22 Selectee passes FCC scrutiny, a Construction Permit is usually
23 granted within four to six months which allows the Tentative
24 Selectee eighteen months to build the system, or forfeit it.
25 Following completion of the construction, the FCC inspects the
26 system and grants a license to operate if it conforms to the
27 necessary laws and regulations.

28 20. Defendants ROMULUS, BREEN and EASTON (together

(
1 "DEFENDANTS") held themselves out as having the necessary
2 information and expertise to complete applications for the FCC
3 lottery in conformance with FCC regulations.

4 21. Between July, 1987 and May, 1988, each of the INDIVIDUAL
5 PLAINTIFFS contacted DEFENDANTS to have them prepare an application
6 for participation in the FCC lottery for allocation of licenses to
7 operate a cellular telephone system in areas designated as RSAs.

8 22. Each individual Plaintiff signed a Service Agreement with
9 Defendant ROMULUS and was assured that all the details of the
10 application preparation, conformity and legal requirements would be
11 taken care of by DEFENDANTS which were to prepare the applications,
12 handle the FCC fees and submit the requisite engineering material,
13 all letter-perfect and defect-free with conformity to current FCC
14 regulations.

15 23. Following the signing of the Contracts, Defendant ROMULUS
16 brought together PLAINTIFFS and assigned them to FEDERAL, a pre-
17 formed General Partnership designed to consist of 20% maximum non-
18 U.S. citizen interest holders.

19 24. On or about November 8, 1988, FEDERAL won in the third
20 lottery and was named Tentative Selectee for Arizona-2, the largest
21 RSA in the region and a market potentially very valuable to any
22 cellular system operator.

23 25. On or about October 26, 1988, a partnership named
24 Continental Cellular was dismissed by the FCC for having non-citizen
25 members in its General Partnership structure, thus violating the
26 FCC's regulation prohibiting alien participation in management
27 affairs. Continental Cellular then restructured its partnership
28 into a Limited Partnership, thus insulating non-citizens from the

1 management of the partnership.

2 26. FEDERAL also reacted and had counsel amend its structure
3 into a Limited Partnership on or about December 12, 1988 in order to
4 insulate non-citizens from management. Soon after, at least 20
5 partnerships, mostly ROMULUS applicants now made aware of this
6 alleged infraction, amended their respective applications to reflect
7 Limited Partnership status.

8 27. Continental Cellular, being the first to win in the
9 lottery process was also first to be cited by the FCC for this
10 infraction, thus establishing precedent for the other 20 plus
11 partnerships with similar defects. Continental Cellular has thus
12 become the test case for all affected partnerships.

13 28. In February 1990, Continental Cellular was given notice of
14 its dismissal based on the alien ownership issue. It was informed
15 that as its conversion to Limited Partnership was after the lottery
16 commenced and qualification is based upon the structure of the
17 partnership as it stood at the time of its application prior to the
18 lottery, that the amendment to alter its structure to insulate its
19 aliens was unacceptable.

20 29. On or about March 7, 1990, the FCC gave notice to FEDERAL
21 and approximately 20 other partnerships of their dismissals, citing
22 identical circumstances to those of Continental Cellular.

23 30. On or about April 16 1990, FEDERAL joined with a group of
24 the partnerships thus affected and retained counsel to file a
25 Petition for Reconsideration before the FCC. Continental Cellular
26 had previously filed a similar Petition which was denied.
27 Continental Cellular appealed the denial of its Petition for
28 Reconsideration to the D.C. Court of Appeals which remanded the

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1 Continental Cellular matter back to the FCC on or about October 1,
2 1990.

3 31. On or about November 20, 1991, the dismissals of
4 Continental Cellular upon remand, and of FEDERAL and 18 other
5 partnerships on their Petitions of Reconsideration were affirmed by
6 the FCC because of the infraction of the regulations regarding
7 participation by non-citizens.

8 32. On or about December 19, 1991 FEDERAL, and 19 other
9 partnerships, filed with the U.S. Court of Appeals for the District
10 of Columbia Circuit to seek relief from the FCC's capricious and
11 inconsistent interpretation of its regulations in reaching its
12 decision regarding the dismissals. These cases are still pending.

13 33. On or about January 29, 1992, the FCC issued a notice that
14 it would hold a new lottery for those RSAs whose Tentative Selectees
15 have been disqualified. FEDERAL and the other affected partnerships
16 are seeking a stay of this lottery.

17 FIRST CAUSE OF ACTION
18 (Breach of Written Contract)

19 34. PLAINTIFFS reallege and incorporate herein by reference
20 paragraphs 1 through 33 of this Complaint as though fully set forth
21 below.

22 35. Between July, 1987 and May, 1988, INDIVIDUAL PLAINTIFFS
23 each entered into a contract with Defendant ROMULUS entitled
24 "Cellular Application Services Agreement."

25 36. PLAINTIFFS have performed all conditions, covenants, and
26 promises under the Contracts required to be performed on their
27 parts.

28 37. Within the last four years, DEFENDANTS breached the
Contracts by failing to prepare and submit PLAINTIFFS' applications

in accordance with FCC regulations. Those regulations limit participation by non U.S. citizens. By structuring the Partnership as a General Partnership rather than a Limited Partnership, DEFENDANTS violated the FCC regulations causing FEDERAL to lose its position as Tentative Selectee and preventing it from obtaining a construction permit and license to operate. Even if the Court of Appeal ultimately decides in favor of PLAINTIFFS, they will be damaged as the authorized competitor in the area will have had two years head start in constructing its cellular phone system and developing a market.

38. Furthermore, DEFENDANTS' breach of the Contracts have prevented PLAINTIFFS from making any further application to the FCC as Federal Mobile Radio, L.P. It has caused exclusion from full term participation in the original lottery and in those re-lotteries that have since been held.

39. As a direct and proximate result of DEFENDANTS' breach of the Contracts, PLAINTIFFS have been damaged in an amount to be proven at trial, but in any event, in excess of \$25,000.00.

WHEREFORE, PLAINTIFFS pray for judgment as set forth below.

SECOND CAUSE OF ACTION
(Negligence)

40. PLAINTIFFS reallege and incorporate herein by reference paragraphs 1 through 33 of this Complaint as though fully set forth below.

41. DEFENDANTS undertook to join PLAINTIFFS into a partnership for the purpose of applying for RSAs under the FCC lottery. DEFENDANTS held themselves out as having the necessary knowledge and expertise to complete applications for the FCC lottery in conformance with FCC regulations and as having more skill and

1 knowledge in this are than the ordinary individual.

2 42. Having undertaken to form the partnership, and having held
3 themselves out as having special knowledge and expertise in this
4 area, DEFENDANTS were under a duty to exercise the level of care and
5 skill to do so in compliance with FCC regulations that a
6 professional engaged in such a business would exercise.

7 43. DEFENDANTS breached their duty by failing to exercise the
8 necessary standard of care and skill in forming the partnership and
9 making application to the FCC.

10 44. As a direct and proximate result of DEFENDANTS'
11 negligence, FEDERAL lost its position as Tentative Selectee and
12 preventing it from obtaining a construction permit and license to
13 operate. Even if the Court of Appeal ultimately decides in favor of
14 PLAINTIFFS, they will be damaged as the authorized competitor in the
15 area will have had two years head start in constructing its cellular
16 phone system and developing a market.

17 45. As a direct and proximate result of DEFENDANTS'
18 negligence, PLAINTIFFS have been damaged in an amount to be proved
19 at trial, but in any event, in excess of \$25,000.

20 WHEREFORE, PLAINTIFFS pray for judgment as set forth below.

21 THIRD CAUSE OF ACTION
22 (Fraud - False Promise)

23 46. PLAINTIFFS reallege and incorporate herein by reference
24 paragraphs 1 through 33 of this Complaint as though fully set forth
25 below.

26 47. DEFENDANTS represented to PLAINTIFFS that they would
27 prepare their applications in compliance with FCC regulations such
28 that they would be "letter-perfect and defect-free."

48. PLAINTIFFS are informed and believe and thereon allege

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1 that the representations set forth above were false and that
2 DEFENDANTS knew, or should have known of the falsity of those
3 representations.

4 49. PLAINTIFFS are informed and believe and thereon allege
5 that DEFENDANTS intentionally made the forgoing false
6 representations to PLAINTIFFS with the intent of misleading
7 PLAINTIFFS and causing PLAINTIFFS to enter into the Contracts.

8 50. PLAINTIFFS were unaware of the falsity of the
9 representations described above, and relied upon those
10 representations in deciding to enter into the Contracts. Had they
11 known of the falsity of those representations, they would not have
12 entered into the Contracts.

13 51. As a direct and proximate result of the false
14 representations made by DEFENDANTS, PLAINTIFFS have sustained damage
15 in an amount to be proved at trial, but in any event, in excess of
16 \$25,000.

17 52. PLAINTIFFS are informed and believe and thereon allege
18 that in doing the things herein alleged DEFENDANTS acted
19 intentionally, willfully, fraudulently, maliciously, with the intent
20 and for the purpose of injuring PLAINTIFFS, and PLAINTIFFS are
21 therefore entitled to an award of exemplary damages in an amount
22 sufficient to deter DEFENDANTS from similar conduct in the future.

23 WHEREFORE, PLAINTIFFS pray for judgment as set forth below.

24 FOURTH CAUSE OF ACTION
25 (Negligent Misrepresentation)

26 53. PLAINTIFFS reallege and incorporate herein by reference
27 paragraphs 1 through 33, and paragraph 47 of this Complaint as
28 though fully set forth below.

54. PLAINTIFFS are informed and believe and thereon allege

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1 that the representations set forth above were false and that
2 DEFENDANTS made those representations with no reasonable grounds for
3 believing them to be true.

4 55. PLAINTIFFS are informed and believe and thereon allege
5 that DEFENDANTS made the forgoing false representations to
6 PLAINTIFFS with the intent of causing PLAINTIFFS to enter into the
7 Contracts.

8 56. PLAINTIFFS were unaware of the falsity of the
9 representations described above, or of DEFENDANTS' inability to make
10 the above reference allegations accurately, and relied upon those
11 representations in deciding to enter into the Contracts. Had they
12 known of the falsity of those representations, they would not have
13 entered into the Contracts.

14 57. As a direct and proximate result of the false
15 representations made by DEFENDANTS, PLAINTIFFS have sustained damage
16 in an amount to be proved at trial, but in any event, in excess of
17 \$25,000.

18 WHEREFORE, PLAINTIFFS pray for judgment as set forth below.

19 FIFTH CAUSE OF ACTION
20 (Breach of Fiduciary Duty)

21 58. PLAINTIFFS reallege and incorporate herein by reference
22 paragraphs 1 through 33 of this Complaint as though fully set forth
23 below.

24 59. DEFENDANTS held themselves out as having the necessary
25 knowledge and expertise to complete applications for the FCC lottery
26 in conformance with FCC regulations. DEFENDANTS furthermore
27 undertook to form partnerships through which to apply to the FCC
28 lotteries on behalf of their clients. They therefore acted as
promoters of the partnerships. Furthermore, they had access to

information not accessible to their clients. In reliance upon DEFENDANTS' superior knowledge and expertise PLAINTIFFS reposed trust and confidence in them and in their integrity, fidelity and expertise.

60. By virtue of having held themselves out as experts in the completion of FCC applications, their undertaking of the formation of partnerships on behalf of their clients, their superior knowledge and information and PLAINTIFFS' reposing of trust and confidence in their integrity, fidelity and expertise, DEFENDANTS stood in the position of fiduciaries to PLAINTIFFS.

61. Over the period of time from the formation of the Partnership to the present, DEFENDANTS breached their fiduciary duties by failing to structure the Partnership in such a way as to comply with FCC regulations.

62. In acting as described above, DEFENDANTS failed to exercise the care required by a promoter in that they acted contrary to the terms of the Contracts and unduly profited from the formation of the Partnership and otherwise obtained advantage over PLAINTIFFS in the establishment of the Partnership.

63. As a result of DEFENDANTS' breach of their fiduciary duties, PLAINTIFFS have sustained damage in an amount to be proved at trial, but in any event, in excess of \$25,000.

64. PLAINTIFFS are informed and believe and thereon allege that in doing the things herein alleged DEFENDANTS acted intentionally, willfully, fraudulently, maliciously, with the intent and for the purpose of injuring PLAINTIFFS, and PLAINTIFFS are therefore entitled to an award of exemplary damages in an amount sufficient to deter DEFENDANTS from similar conduct in the future.

WHEREFORE, PLAINTIFFS pray for judgment as set forth below.

PRAYER FOR RELIEF

AS TO THE FIRST CAUSE OF ACTION:

1. For damages in an amount to be proved at trial but in any event in excess of \$25,000, plus interest thereon as provided by law;
2. For costs of suit herein incurred; and
3. For such other and further relief as the court deems proper.

AS TO THE SECOND CAUSE OF ACTION:

1. For damages in an amount to be proved at trial but in any event in excess of \$25,000, plus interest thereon as provided by law;
2. For costs of suit herein incurred; and
3. For such other and further relief as the court deems proper.

AS TO THE THIRD AND FIFTH CAUSES OF ACTION:

1. For damages in an amount to be proved at trial but in any event in excess of \$25,000, plus interest thereon as provided by law;
2. For exemplary and punitive damages according to proof;
3. For costs of suit herein incurred; and
4. For such other and further relief as the court deems proper.

AS TO THE FOURTH CAUSE OF ACTION:

1. For damages in an amount to be proved at trial but in any event in excess of \$25,000, plus interest thereon as provided by law;

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- 2. For costs of suit herein incurred; and
- 3. For such other and further relief as the court deems proper.

DATED: March 2, 1992

BELL, ROSENBERG & HUGHES

By *Teresa Jenkins Main*
Teresa Jenkins Main
Attorneys for Plaintiffs

Name, Address and Telephone No. of Attorney(s)
Andrew A. August, SBN. 112851
BAYER, EVERETT & AUGUST
425 California Street, Ste. 1800
San Francisco, CA 94104
(415) 394-5700

FILED
San Francisco County Superior Court

JUL 5 - 1995

ALAN CARLSON, Clerk
BY: Alan E. Carlson
Deputy Clerk

Plaintiffs

Attorney(s) for

Superior COURT OF CALIFORNIA, COUNTY OF San Francisco
(SUPERIOR, MUNICIPAL, or JUSTICE)

(Name of Municipal or Justice Court District or of branch court, if any)

Plaintiff(s):

Federal Mobile Radio, L.P., et al.,

Defendant(s):

Romulus Engineering, Inc., et al.

(Abbreviated Title)

CASE NUMBER 941022

REQUEST FOR DISMISSAL

TYPE OF ACTION

- ☐ Personal Injury, Property Damage and Wrongful Death:
☐ Motor Vehicle ☐ Other
☐ Domestic Relations ☐ Eminent Domain
☒ Other: (Specify) Contract

TO THE CLERK: Please dismiss this action as follows: (Check applicable boxes.)

1. ☒ With prejudice ☐ Without prejudice
2. ☒ Entire action ☐ Complaint only ☐ Petition only ☐ Cross-complaint only
☐ Other: (Specify)*

Dated: May 31, 1995

*If dismissal requested is of specified parties only, of specified causes of action only or of specified cross-complaints only, so state and identify the parties, causes of action or cross-complaints to be dismissed.

Bayer, Everett & August

Plaintiffs

Attorney(s) for

Andrew A. August

(Type or print attorney(s) name(s))

TO THE CLERK: Consent to the above dismissal is hereby given. **

Townsend & Townsend Khourie & Crew

Dated: June 26, 1995

Defendants

Attorney(s) for

Daniel J. Furniss

(Type or print attorney(s) name(s))

(To be completed by clerk)

- ☐ Dismissal entered as requested on
☐ Dismissal entered on as to only.....
☐ Dismissal not entered as requested for the following reason(s), and attorney(s) notified on

Dated

By Clerk
Deputy

FILED

San Francisco County Superior Court

NOV - 5 1993

ALAN M. CARLSON, Clerk

BY: Quentin L. Breen
Deputy Clerk

James C. Nelson (State Bar No. 47108)
John H. Banister (State Bar No. 103375)
BELL, ROSENBERG & HUGHES
1300 Clay Street, Suite 1000
P.O. Box 70220, Station "D"
Oakland, California 94612-0220
Telephone: (510) 832-8585

Attorneys for Plaintiffs

PLAN 1

STATUS CONFERENCE DATE: APR 8 1994

8:30 A.M.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO

QUADRANGLE COMMUNICATIONS,¹ a
general partnership; MARY L.
ALLEN;² JOSEPH C. BAILEY,³ M.D.;
WENDY BEY;⁴ MABEL E. BILLMAN;⁵
FAYE G. DIRECTOR;⁶ DANIEL
GILMARTIN,⁷ M.D.; ELIZABETH L.
HAXO;⁸ ALBERT⁹ and ANITA¹⁰ HOOVER;
JOHN F. HUMPHREY;¹¹ RUTH W.
JENNINGS;¹² JULIA Q. KEGGI;¹³
ROBERT D. KLYM,¹⁴ DDS; CLARENCE
MAST, JR.,¹⁵ M.D.; JIM McPEAK;
DEBRA POPP SVENSSON-DE NICOLA;
FRANK W. TROUP; GAIL WEDEMEYER;
WILLIAM M. WENDELL; WILBUR and
MARGARET ZUVER, individuals;
FAIRVIEW ELLIOTT TRUST; and THE
ESTATE OF HARRIET PAGE;

Plaintiffs,

v.

ROMULUS ENGINEERING, INC.,¹ a
Delaware corporation; ROMULUS
ENGINEERING,² a California
partnership; ROMULUS
CORPORATION,³ a Delaware
corporation; THE EASTON
CORPORATION,⁴ a California
corporation; QUENTIN L. BREEN,⁵
an individual; ANTHONY T.
EASTON,⁶ an individual; and DOES
1 through 20, inclusive,

Defendants.

No:

956163

COMPLAINT FOR BREACH OF
CONTRACT, NEGLIGENCE, FRAUD,
NEGLIGENT MISREPRESENTATION
BREACH OF FIDUCIARY DUTY, AND
BREACH OF THE IMPLIED WARRANTY
OF FITNESS

1 Plaintiffs hereby allege as follows:

2 GENERAL ALLEGATIONS

3 1. Plaintiff QUADRANGLE COMMUNICATIONS ("QUADRANGLE") is a
4 General Partnership, organized and existing under the laws of the
5 State of Delaware with its principal place of business in the State
6 of Ohio.

7 2. Plaintiffs MARY L. ALLEN; JOSEPH C. BAILEY, M.D.; WENDY
8 BEY; MABEL E. BILLMAN; FAYE G. DIRECTOR; FAIRVIEW ELLIOTT TRUST;
9 DANIEL GILMARTIN, M.D.; ELIZABETH L. HAXO; ALBERT and ANITA HOOVER;
10 JOHN F. HUMPHREY; RUTH W. JENNINGS; JULIA Q. KEGGI; ROBERT D. KLYM,
11 DDS; CLARENCE MAST, JR., M.D.; JIM McPEAK; THE ESTATE OF HARRIET
12 PAGE; DEBRA POPP SVENSSON-DE NICOLA; FRANK W. TROUP; GAIL WEDEMEYER;
13 WILLIAM M. WENDELL; WILBUR and MARGARET ZUVER are General Partners
14 in QUADRANGLE and clients of Defendants ROMULUS ENGINEERING, INC.,
15 ("REI"), ROMULUS ENGINEERING ("RE"), QUENTIN L. BREEN ("BREEN") and
16 ANTHONY T. EASTON ("EASTON"), (Hereinafter the general partners
17 shall be referred to together as "INDIVIDUAL PLAINTIFFS" and
18 together with QUADRANGLE, as "PLAINTIFFS").

19 3. PLAINTIFFS are informed and believe and thereon allege
20 that Defendant REI is a corporation organized and existing under the
21 laws of the State of Delaware and licensed to do business in
22 California. The principal place of business is, and at all times
23 herein mentioned was in the City and County of San Francisco,
24 California.

25 4. PLAINTIFFS are informed and believe and thereon allege that
26 Defendant RE is a partnership organized under the laws of the State
27 of California with its principal place of business in the City and
28 County of San Francisco, California.

1 5. PLAINTIFFS are informed and believe and thereon allege
2 that Defendant ROMULUS CORPORATION ("ROMULUS"), is a corporation
3 organized and existing under the laws of the State of Delaware with
4 its principal place of business in the State of Oregon, whose
5 business activities in California are substantial, continuous and
6 systematic.

7 6. PLAINTIFFS are informed and believe and thereon allege
8 that Defendant THE EASTON CORPORATION ("EASTON CORP."), is a
9 corporation organized and existing under the laws of the State of
10 Delaware and licensed to do business in California.

11 7. PLAINTIFFS are informed and believe and thereon allege that
12 Defendant QUENTIN L. BREEN ("BREEN") is and at all times herein
13 mentioned was, a resident of the State of Oregon, whose business
14 activities in California are substantial, continuous and systematic.

15 8. PLAINTIFFS are informed and believe and thereon allege
16 that Defendant ANTHONY T. EASTON ("EASTON") is, and at all times
17 herein mentioned was, a resident of the County of San Mateo,
18 California.

19 9. During 1987 and 1988, INDIVIDUAL PLAINTIFFS each entered
20 into a contract with Defendants RE or REI, BREEN and EASTON
21 (together "DEFENDANTS") to put together investors in partnerships
22 which would be applicants to the FCC for the RSA lotteries, and to
23 prepare and file applications for such partnership that would be in
24 compliance with FCC rules and regulations. Attached hereto and
25 incorporated herein as Exhibit "A" is true and accurate copy of a
26 Fee Acknowledgement Agreement which evidences the contract.

27 10. During 1988, QUADRANGLE contracted with DEFENDANTS for
28 services relating to its formation, and relating to preparing and

1 filing applications for FCC licenses.

2 11. PLAINTIFFS are informed and believe and thereon allege
3 that DEFENDANTS BREEN and EASTON are and/or all at times have been
4 the sole officers and directors of Defendant REI.

5 12. PLAINTIFFS are informed and believe and thereon allege
6 that Defendant RE was a partnership between Defendant EASTON CORP.
7 and Defendant ROMULUS.

8 13. PLAINTIFFS are informed and believe and thereon allege
9 that, at all times pertinent to this action, Defendant ROMULUS and
10 Defendant EASTON CORP. were the sole owners of Defendant REI and
11 Defendant ROMULUS is currently the sole owner of Defendant REI.

12 14. PLAINTIFFS are informed and believe and thereon allege
13 that Defendant ROMULUS is owned, operated, managed and controlled by
14 Defendant BREEN and his family trust.

15 15. PLAINTIFFS are informed and believe and thereon allege
16 that Defendant EASTON CORP. is owned, operated, managed and
17 controlled by Defendant EASTON and his family.

18 16. PLAINTIFFS are ignorant of the true names and capacities,
19 whether individual, corporate, associate, or otherwise, of
20 DEFENDANTS named as DOES 1 to 20, and have therefore sued them by
21 such fictitious names. Upon discovery of their true names,
22 PLAINTIFFS will seek leave to amend this Complaint to show their
23 true names and capacities, together with apt and proper words to
24 charge them.

25 17. PLAINTIFFS are informed and believe and thereon allege
26 that at all relevant times, each of the DEFENDANTS, including DOES
27 1 to 20, was the agent, servant and employee of the remaining
28 DEFENDANTS and in doing the things herein alleged was acting within

1 the course and scope of such agency or employment and with the
2 consent and permission of the remaining DEFENDANTS; and that each of
3 the DEFENDANTS, including DOES 1 to 20, proximately caused the
4 damages hereinafter alleged.

5 18. PLAINTIFFS are informed and believe and thereon allege
6 that DOES 1 to 20 were responsible in some manner for the events and
7 happenings set forth herein. It shall be deemed that whenever and
8 wherever in this Complaint any Defendant, whether specifically named
9 or not, is the subject of any charging allegation, that DOES 1 to 20
10 are likewise the subject of that charging allegation.

11 19. The Federal Communications Commission ("FCC") designated
12 423 markets called Rural Statistical Areas ("RSAs") for the purpose
13 of awarding permits and licenses for the construction and operation
14 of cellular telephone systems.

15 20. In May, 1981, Congress mandated that two cellular
16 operators would exist in each designated RSA to encourage
17 competition. One operator was to be selected from the existing
18 regional wireline telephone companies; the competing entity was to
19 be a non-wireline operator, such as QUADRANGLE. The FCC held
20 lotteries, administered concurrently for the operators (the RSA
21 lotteries).

22 21. The FCC commenced the RSA lotteries on or about September
23 23, 1988 and concluded them on or about December 20, 1989.

24 22. To participate in a lottery, an applicant was required to
25 submit applications and specified engineering materials prepared in
26 conformity with FCC rules and regulations.

27 23. The FCC delegated the responsibility to process the
28 applications for the RSA lotteries to staff, the FCC Mobile Services

1 Division of the Common Carrier Bureau (the "Bureau").

2 24. The winner of the lottery was called the Tentative
3 Selectee. If there are no petitions to deny and the Tentative
4 Selectee's application passes FCC scrutiny, a Construction Permit is
5 usually granted within four to six months which allows the Tentative
6 Selectee eighteen months to build the system, or forfeit it.
7 Following completion of the construction, the FCC inspects the
8 system and grants a license to operate if it conforms to the
9 necessary laws and regulations.

10 25. DEFENDANTS offered an "extraordinary investment
11 opportunity with nominal application cost, very low risk and
12 exceptional potential return." For a fee, DEFENDANTS represented
13 that they would put together like investors in a partnership, and
14 prepare and file applications in the name of the partnership, which
15 complied with FCC rules and regulations (the "investment
16 opportunity").

17 26. DEFENDANTS represented that they had the experience,
18 skill, expertise and special knowledge to properly form the
19 partnerships, and to process and file applications for the
20 partnerships in compliance with law and FCC rules and regulations.
21

22 27. During 1988, INDIVIDUAL PLAINTIFFS purchased the
23 investment opportunity offered by DEFENDANTS for a total of over Two
24 Hundred Twenty Thousand Dollars (\$220,000.00).

25 28. DEFENDANTS put together INDIVIDUAL PLAINTIFFS and assigned
26 them to QUADRANGLE, a general partnership formed by DEFENDANTS with
27 the purpose of being the applicant to all RSA markets. One of
28 QUADRANGLE'S general partners was a non-U.S. citizen ("alien").

1 29. During 1988, DEFENDANTS prepared and filed applications
2 with QUADRANGLE as the applicant for all RSA markets.

3 30. On or about June 14, 1989, QUADRANGLE won a RSA lottery
4 and was named Tentative Selectee for Texas 8-Gaines, a market
5 potentially very valuable.

6 31. On or about October 26, 1988, the Bureau initially
7 dismissed another applicant, Continental Cellular, for having non-
8 citizen members in its general partnership structure, which is in
9 violation of the FCC's longstanding regulation prohibiting non-
10 citizen participation and control of the U.S. airwaves. Continental
11 Cellular then restructured its partnership into a limited
12 partnership, in an attempt to insulate non-citizens from the
13 management of the partnership.

14 32. Soon thereafter, DEFENDANTS provided PLAINTIFFS with
15 amendments to their partnership agreement, and directed PLAINTIFFS
16 to amend QUADRANGLE into a limited partnership and to amend their
17 respective applications to reflect limited partnership status.
18 QUADRANGLE did not amend its partnership agreement because, in the
19 interim, its sole non-citizen general partner died, transferring his
20 interest to a U.S. citizen executor. QUADRANGLE did, however,
21 timely file an amendment to its application with the FCC to reflect
22 this change in ownership.

23 33. On or about May 25, 1990, the Bureau initially dismissed
24 QUADRANGLE, citing identical circumstances to those of Continental
25 Cellular.

26 34. Pursuant to regulations, Continental Cellular filed a
27 Petition for Reconsideration of the initial dismissal made by the
28 Bureau and requested the full Board of the FCC to hear the matter.

1 35. On or about April 16, 1990, QUADRANGLE challenged the
2 Bureau's initial decision by filing a Petition for Reconsideration
3 before the FCC.

4 36. On or about November 20, 1991, the FCC Board issued its
5 final order, dismissing a number of partnerships, including
6 QUADRANGLE and Continental Cellular, for violation of the FCC's
7 rules implementing 47 U.S.C. §310(b).

8 37. On or about December 19, 1991 QUADRANGLE, and 19 other
9 partnerships, filed with the U.S. Court of Appeals for the District
10 of Columbia Circuit to seek relief from the FCC's final dismissal.
11 On July 30, 1993, the Court upheld the FCC's final decision, holding
12 that its rules regarding alien ownership and control were both
13 reasonable and foreseeable.

14 38. On or about January 29, 1992, the FCC issued a notice that
15 it would hold a new lottery for those RSAs whose Tentative Selectees
16 have been disqualified. The re-lottery for Texas 8-Gaines was held
17 on April 8, 1992.

18 FIRST CAUSE OF ACTION
19 (Breach of Written Contract Between
20 INDIVIDUAL PLAINTIFFS and DEFENDANTS)

21 39. INDIVIDUAL PLAINTIFFS reallege and incorporate herein by
22 reference paragraphs 1 through 38 of this Complaint as though fully
23 set forth below.

24 40. During 1988, INDIVIDUAL PLAINTIFFS, and each of them,
25 entered into a contract with DEFENDANTS for the purchase of an
26 investment opportunity that included putting together like investors
27 in a partnership, the purpose of which was to apply to all RSA
28 lotteries, and preparing and filing applications in the name of such
partnership, in compliance with the law and FCC rules and

1 regulations.

2 41. INDIVIDUAL PLAINTIFFS have performed all conditions,
3 covenants, and promises under the contracts required to be performed
4 on their parts.

5 42. Within the last four years, DEFENDANTS breached the
6 contracts by forming a general partnership that included an alien,
7 and using this general partnership as the applicant in the
8 applications DEFENDANTS filed for the RSA lotteries, which is in
9 violation of the FCC's rules implementing 47 U.S.C. §310(b).

10 43. Furthermore, DEFENDANTS' breach of the contracts have
11 prevented INDIVIDUAL PLAINTIFFS from making any further application
12 to the FCC as QUADRANGLE, a general partnership with no alien
13 ownership or control. It has caused exclusion from full term
14 participation in the original lottery and in those re-lotteries that
15 have since been held.

16 44. As a direct and proximate result of DEFENDANTS' breach,
17 PLAINTIFFS lost the Texas 8-Gaines market it won in the lottery and
18 were damaged when, on November 20, 1991, the FCC issued its final
19 order, dismissing QUADRANGLE'S application as being in violation of
20 the FCC's rules implementing 47 U.S.C. §310(b). On April 8, 1992,
21 the FCC re-lotteried the Texas 8-Gaines market. PLAINTIFFS' damage
22 is in an amount to be proved at trial, but in any event, in excess
23 of Twenty-Five Thousand Dollars (\$25,000.00).

24 WHEREFORE, PLAINTIFFS pray for judgment as set forth below.

25 SECOND CAUSE OF ACTION
26 (Breach of Contract Between
QUADRANGLE and DEFENDANTS)

27 45. PLAINTIFFS reallege and incorporate herein by reference
28 paragraphs 1 through 44 of this Complaint as though fully set forth

1 below.

2 46. During 1988, QUADRANGLE contracted with DEFENDANTS to form
3 the partnership whose purpose was to apply to the RSA lotteries, to
4 prepare applications on QUADRANGLE'S behalf for the RSA lotteries in
5 a "letter perfect and defect free" manner, and to file such
6 applications in compliance with the law and FCC rules and
7 regulations.

8 47. QUADRANGLE has performed all conditions, covenants and
9 promises under the contract required to be performed on its part.

10 48. DEFENDANTS breached the contract by forming QUADRANGLE as
11 a general partnership with a non-U.S. citizen and then applying for
12 the RSA lotteries on behalf of QUADRANGLE, which is in violation of
13 the FCC's rules implementing 47 U.S.C. §310(b).

14 49. DEFENDANTS' breach of the contract has prevented
15 QUADRANGLE from making any further application to the FCC. It has
16 caused exclusion from full term participation in the original
17 lottery and in those re-lotteries that have since been held.

18 50. As a direct and proximate result of DEFENDANTS' breach,
19 PLAINTIFFS lost the Texas 8-Gaines market it won in the lottery and
20 were damaged when, on November 20, 1991, the FCC issued its final
21 order, dismissing QUADRANGLE'S application as being in violation of
22 the FCC's rules implementing 47 U.S.C. §310(b) and the FCC re-
23 lotteried the Texas 8-Gaines market. PLAINTIFFS' damage is in an
24 amount to be proved at trial, but in any event, in excess of Twenty-
25 Five Thousand Dollars (\$25,000.00).

26 WHEREFORE, PLAINTIFFS pray for judgment as set forth below.

27 ///

28 ///

THIRD CAUSE OF ACTION
(Negligence)

51. PLAINTIFFS reallege and incorporate herein by reference paragraphs 1 through 50 of this Complaint as though fully set forth below.

52. DEFENDANTS undertook to put together PLAINTIFFS into a partnership, formed by DEFENDANTS for the purpose of applying for RSA lotteries. DEFENDANTS held themselves out as having the experience, skill, expertise and special knowledge to put investors in partnerships that would apply to the RSA lotteries and to prepare and file applications for such partnerships, which would comply with the law and FCC rules and regulations.

53. DEFENDANTS represented to PLAINTIFFS that DEFENDANTS had special knowledge, skill, experience and expertise to put them in a partnership, which would be the applicant that would file applications for the RSA lotteries, in compliance with law and FCC rules and regulations.

54. Having undertaken to put together like investors to form the partnership, having undertaken to properly prepare and file applications to the FCC, and having held themselves out as having experience, skill, expertise and special knowledge in this area, DEFENDANTS were under a duty to exercise the level of care and skill as a professional engaged in such a business would exercise.

55. DEFENDANTS breached their duty by failing to exercise the necessary standard of care and skill in putting together like investors, forming the partnership, and preparing and filing PLAINTIFFS' application to the FCC for the RSA markets.

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